



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. SECRETARY OF STATE

Notice of Proposed Rulemaking

Title 2. Administration

Division 7. Secretary of State

Chapter 9. Business Programs

Amending Section 21903, Title 2 California Code of Regulations (Special Handling Fees)

Adding Section 21903.5, Title 2 California Code of Regulations (Copy Fees)

Date: March 11, 2011

To: All Interested Parties

From: Secretary of State

Subject: Notice of proposed Amendment to California Code of Regulations Title 2, Section 21903 and Adding Section 21903.5

Authority

Under authority established in Government Code section 12182, the Secretary of State proposes to amend section 21903 and add section 21903.5 to Title 2 of the California Code of Regulations. The proposed amendment and addition are related to special handling fees and copy fees.

Reference

The regulations implement, interpret and/or make specific Government Code section 12182.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Pursuant to Government Code section 12182, the Secretary of State may by regulation establish fees to be charged and collected for copying and special handling in connection with filing documents, issuing certificates and other services performed by the office. The proposed regulations affect the Secretary of State's fees for issuing copies of Statements of Information online, which are the documents listing directors, officers, managers and other contact information that are filed annually or biennially by corporations and limited liability companies.

The proposed amendment moves established copy fees from an existing regulation to a separate new regu-

lation solely related to copy fees and ensures no fee will be charged for issuing an electronic copy of a Statement of Information to the filer as part of an online filing transaction. Currently, Section 21903 of the California Code of Regulations sets special handling fees for processing documents, including specified copy fees. Amending Section 21903 will remove the existing copy fees in Section 21903(c)(11), and a new separate section specific to copy fees for documents on file pursuant to Government Code section 12182 will be created. Also, this amendment clarifies and standardizes terms used within the section.

The Secretary of State proposes to add Section 21903.5 to highlight applicable copy fees for documents on file pursuant to Government Code section 12182 and to clarify a filer receiving an uncertified electronic copy at the time of filing a Statement of Information with the Secretary of State online will not be charged for receiving that electronic copy. This will provide an incentive to use the automated online filing service provided by the Secretary of State, which will make this public information available to the public faster and through a more economical process than through manual filings.

Written Public Comment Period

The written public comment period will close April 29, 2011. Any person may submit comments about the proposed regulations. To be considered, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Anika Van Eaton
Secretary of State
Business Programs
Division 1500 11th St.
Sacramento, CA 95814

Or to: anika.vaneaton@sos.ca.gov
You also may contact Todd Vlaanderen:

Todd Vlaanderen
Secretary of State
Business Programs Division
1500 11th St.
Sacramento, CA 95814

Or to: todd.vlaanderen@sos.ca.gov

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed above no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Secretary of State, at its own motion, or at the instance of any interested person,

may adopt the proposal substantially as set forth without further notice.

Availability of Proposed Text and Statement of Reasons

Copies of the proposed action, express terms, the Initial Statement of Reasons, and all of the information upon which the proposal is based are available for review upon request to Anika Van Eaton. The rulemaking file is available for review during normal business hours at 1500 11th St., Third Floor, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Anika Van Eaton, as specified above.

Accessing Information Regarding This Rulemaking File on the Secretary of State Website

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at <http://www.sos.ca.gov/>.

Availability of Changes to Proposed Text

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Secretary of State will make the full text of the changed regulations available for at least 15 more days before the date the regulations are permanently amended.

Fiscal Impact

There is no cost to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There will be cost avoidance for the Secretary of State because once customers can immediately receive an electronic copy of their Statement of Information when they file online, more customers will use the website, resulting in less staff time, overtime and temporary help needed to process paper documents, as well as savings for ink/toner, postage and paper that otherwise would be used for providing copies. There will be no non-discretionary cost or savings imposed upon local agencies. There are no costs or savings in federal funding to the state.

Significant Statewide Adverse Impact Directly Affecting Business, Including Ability to Compete

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Impact on Jobs/Businesses

Adoption of these regulations will not: 1) create or eliminate jobs within California, 2) Create new businesses or eliminate existing businesses within California, or 3) Affect the expansion of businesses currently doing business within California. The proposed regulatory action will benefit businesses by increasing the availability of current public information related to cor-

porations and limited liability companies, while providing the speed and convenience of filing online and providing a free courtesy copy of the filed document to corporations and limited liability companies.

Cost Impacts on Representative Person or Business

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Rather, there will be savings to business owners because they will have an online filing option that provides them with a free electronic copy of their filing. Business owners will have the option to save the electronic image on their computers for their records. If business owners decide to print the electronic copy of their Statement of Information they receive after filing online, there will be the minor cost associated with printing the document with their own printers. However, the increased convenience of filing online and the increased timeliness of immediately receiving the electronic copy will be more important than the minor cost of printing the document.

Impact on Small Businesses

The proposed regulatory action will benefit small businesses by increasing the availability of current public information, providing the speed and convenience of filing online and allowing corporations and limited liability companies to receive an electronic copy of their filed Statements of Information without a fee when filing online. Currently, only certain corporations are allowed to file their Statements of Information online, but cannot receive a copy of the filed document online at the time of filing because the Secretary of State's website does not have the capability to provide such copies. Limited liability companies and all other corporations must submit paper filings and submit a separate mail or in-person request for copies with applicable fees through a separate process.

Local Mandate

The proposed regulations create no local mandate.

Alternatives Statement

In accordance with Government Code section 11346.5, subdivision (a)(13), the Secretary of State must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Secretary of State, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Secretary of State invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

Housing Costs

The Secretary of State has made the determination that the action would have no effect on housing costs.

Final Statement of Reasons

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the listed contact person when it becomes available.

TITLE 4. CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or “Authority”) — pursuant to the authority vested in it by Public Resources Code Section 26009 to promulgate regulations and Public Resources Code Section 26011.8 to establish a sales and use tax exclusions (“STE”) program for Qualified Property utilized for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components or systems — proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Authority proposes to add Title 4, Division 13, Article 2, Sections 10030 through 10037 of the California Code of Regulations (“Regulations”) concerning the implementation of the Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program (“SB 71 Program” or “Program”). The SB 71 Program regulations were initially adopted under the emergency regulation process on October 4, 2010, pursuant to Public Resources Code Section 26011.8(i). These proposed regulations are substantially similar to those adopted on March 24, 2010 under the emergency rulemaking process, and include some modifications and additions that Authority staff believe are appropriate to strengthen the SB 71 Program. The Authority is soliciting input for any modifications or amendments to these proposed regulations.

AUTHORITY AND REFERENCE

Authority: Public Resources Code Sections 26009 and 26011.8. Revenue and Taxation Code Section 6010.8. Public Resources Code Section 26009 authorizes CAEATFA to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code Section 26011.8 provides the authority to develop the Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program. Revenue and Taxation Code Section 6010.8 provides CAEATFA the ability to provide financial assistance in the form of sales and use tax exclusions.

Reference: Section 26011.8 of the Public Resources Code. This regulation will implement, interpret, and make specific section 26011.8 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide financial assistance to participating parties for alternative source and advanced transportation technology projects. These proposed regulations implement and interpret Public Resources Code Section 26011.8, to enable the Authority to implement and administer the SB 71 Program. The purpose of this Program is to promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, air and water pollution, or energy consumption consistent with the statute.

Under Senate Bill 71 (Padilla, Chapter 10, Statutes of 2010), the Authority has been authorized to develop and administer a financial assistance program to specifically approve projects for sales and use tax exclusions (“STE”) on Qualified Property utilized for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components or systems. The authorizing statute requires CAEATFA to evaluate project applications for the sales tax exclusion based on the extent to which (a) the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California, and (b) the fiscal and environmental benefits of the project to the State exceed the level of financial assistance provided to the Applicant.

These regulations establish the application process, eligibility criteria, evaluation criteria, and the program structure and procedures. They have been designed to measure and quantify the fiscal and environmental benefits of each project — to ensure that there is a net

benefit to the State — and to ensure that the program is structured appropriately and effectively.

Article 2. Establishes the Advanced Transportation and Alternative Sources Manufacturing Sales and Use Tax Exclusion Program.

Section 10030. Purpose and Scope. Contains the references to the Public Resources and Revenue and Taxation Codes which provide CAEATFA the authority to grant sales and use tax exclusions to qualified applicants who apply to the Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program. The main reference is 26011.8 of the Public Resources Code.

Section 10031. Definitions. The proposed regulation clarifies the specific meaning of several terms that are a prerequisite for interpreting the other proposed regulations that are necessary for implementation of sections 26003 and 26011.8 of the Public Resources Code.

Section 10032. Application Requirements. This section discusses the timing of the application process, including how applications will be considered by the Authority and what type of documentation will be required for an application to be considered complete.

Section 10033. Eligibility Requirements and Application Evaluation. This section outlines the eligibility and evaluation criteria used during the review of submitted applications. Evaluation criteria consist of three main categories for determining the applicants' total point score and the net benefits realized from granting a sales and use tax exclusion: fiscal, environmental, and optional supplemental information. This section also provides the point calculations of various criteria, and establishes point thresholds for projects to receive Financial Assistance.

Section 10034. Approval of Applications by the Authority. This section describes the procedures that govern the Application approval process and the appeals process to be used in the event an Applicant does not receive a favorable recommendation from staff to receive Financial Assistance.

Section 10035. Regulatory Agreement and Compliance. This section describes several of the legal and reporting documents that will be required under the Program. It also outlines the terms of the Regulatory Agreement entered into by the Applicant and CAEATFA subsequent to Application approval. This section also includes the type of reporting the approved Applicant is required to submit annually, such as a certification that the Qualified Property was used for the purposes specified in the Application as well as a compliance report with information on the number of jobs created and total numbers of units sold.

Section 10036. Fees. This section clearly outlines how application and administrative fees will be calculated for applicants. The fees are consistent with fee

structures in other Boards and Authorities under the jurisdiction of the State Treasurer's Office.

Section 10037. Trade Secrets and Confidential Information. This section establishes procedures by which Applicants can identify certain information submitted to the Authority as confidential or a trade secret and further specifies the procedure under which such information will be withheld or released under the Public Records Act (California Government Code Section 6250, et seq.).

DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effect of the Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The authorizing statute and Program regulations require that the Authority's approval of Financial Assistance be limited to applications/projects that produce a net fiscal and environmental benefit to the State. It is anticipated that this Program will produce a net fiscal benefit.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed on local agencies: None. While the sales and use tax that is excluded could be seen as "lost revenue," the program regulations limit the financial assistance to those applications/projects that are anticipated to have a net fiscal and environmental benefit for the State.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made the determination that the Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In fact, the Authority finds that the proposed regulation will have a positive effect on certain businesses that are awarded financial assistance and on the state's economy and environment generally as a result of the increased economic activity and production of Alternative Source and Advanced Transportation products. This determination is based on a review of the public comments received and analysis performed by the consultant hired by the Authority to assist with the development of these proposed regulations.

Assessment regarding effect on jobs/businesses:

The Regulations will not have a negative effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California. The Authority finds that the proposed regulation will have a positive effect on certain businesses that are awarded financial assistance and on the state's economy and environment generally as a result of the increased economic activity and production of Alternative Source and Advanced Transportation products. This determination is unquantifiable at this time, and is based on a review of the public comments received and analysis performed by the consultant hired by the Authority to assist with the development of these proposed regulations.

Cost impact on a representative private person or business: The Authority is not aware of any cost impacts that a representative private person would incur as a result of compliance with the proposed action. Business entities applying for the Program would incur costs associated with applying for Financial Assistance and complying with the proposed regulations, however, these costs would constitute a small fraction of the amount of Financial Assistance awarded.

Small Business: The Regulations will not have an adverse impact on small business in California and will not affect small businesses since they do not impose additional restrictions or cost on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the Regulations shall be submitted or directed to:

Deana Carrillo, Program Manager
California Alternative Energy and Advanced
Transportation
Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: 916-651-8157
Email: caeatfa@treasurer.ca.gov

Cheryl Ide, Associate Treasury Program Officer
California Alternative Energy and Advanced
Transportation Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: 916-653-3032
Email: cide@treasurer.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to the Authority. The written comment period on the Regulations ends at **5:00 p.m. on April 25, 2011**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the fee structure during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF THE PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

PUBLIC HEARING

A public hearing regarding the Regulations has been scheduled for **10:30 a.m. until business is concluded on Monday, April 25, 2011 at 915 Capitol Mall, Room 587, Sacramento, CA 95814.**

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the public hearing and the written comment period ends, the Authority may adopt the Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/caeatfa/>.

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4. DIVISION 4, CALIFORNIA CODE OF REGULATIONS NOTICE OF PROPOSAL TO ADD RULE 1844.1. SUSPENSION OF AUTHORIZED MEDICATION

The California Horse Racing Board (Board) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1844.1 Suspension of Authorized Medication. The proposed regulation

would allow the Board to temporarily suspend the authorized administration to a horse entered to race of any drug, substance or medication (medications). The temporary suspension may occur only after a public meeting that has been noticed in accordance with Government Code section 11125(a). Suspension of authorized medications may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions. Temporary suspensions of authorized medications shall not exceed 12 months and shall be memorialized in writing.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 28, 2011**, or as soon after that as business before the Board will permit, at the **Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on April 25, 2011**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19562 and 19581, Business and Professions Code. Reference: Sections 19420, 19440 and 19580, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19562 and 19581 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19420, 19440 and 19581, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the State. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof.

The Board proposes to add Rule 1844.1 to provide that it may for any cause temporarily suspend the authorized administration to a horse entered to race of any medication that is otherwise permitted under Rule 1844, Authorized Medication. The suspension of an authorized medication may take place after a public meeting that has been noticed in accordance with Government Code section 11125(a). Subsection 1844.1(a) would allow the Board to temporarily suspend the use of authorized medications. The Board has determined that there are occasions wherein the original premise for authorizing the administration of a medication, or the level at which a medication may be present in a test sample, may be called into question. The science surrounding equine medicine is not static. Over time scientific information and practical experience in managing the threshold levels for authorized medications change, as unintended consequences become apparent. New information regarding the efficacy of a medication may be published, or it may be discovered that a therapeutic medication is being used to achieve an effect other than healing the horse. The Board wishes its regulations to promote the health and welfare of the horse and rider, so it desires the ability to move quickly with regards to

medications that are authorized for administration to horses entered to race. The proposed subsection 1844(a) allows this to happen. Subsection 1844.1(a) requires the Board to hold a public meeting that has been noticed in accordance with Government Code section 11125(a) prior to suspending the use of an authorized medication. Before the Board takes any action, a public meeting will allow it to notify the racing public of its intentions, to explain its reasons for wishing to suspend an authorized medication, and to hear from interested parties regarding the proposed action.

Subsection 1844.1(b) provides that the suspension of an authorized medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions. This gives the Board a range of options when determining if it wishes to suspend the use of an authorized medication. These options are important because of the need for swift action that may arise. Authorized medications may appear in different formulations, such as liquids, pastes, powders, etc. In addition, the source of the medications may render them suspect. On occasion the Board has confiscated substances, or horsemen provide medication for testing. The results of such tests can reveal that the medication has little relation to the United States Food and Drug Administration approved compound. The Board may wish to suspend the use of the authorized medication at a particular race meeting or for a particular breed because that is where the problem has been identified. To ensure the integrity of its races, any suspension of authorized medication would apply to all horses entered to race, so the competition would occur under the same conditions for each entry. This would mean that in addition to any other conditions, all horses would run without the suspended authorized medication.

Subsection 1844.1(c) provides that the Board shall notify in writing the racing association and the trainer's organization of any suspension of an authorized medication. This will ensure that trainers will be adequately notified of the suspension. Racing associations promulgate condition books that include medication information. These condition books are used by owners and trainers who participate in the race meeting. Subsections 1844.1(c)(1) through 1844.1(c)(3) state the minimum information that must be present in the written notification. This will ensure the racing associations and the trainer organizations are fully informed and that they can inform their constituents.

Subsection 1844.1(d) states the temporary suspension of authorization to administer a medication shall not exceed 12 months. This provides the Board with enough time to determine the effect of the temporary suspension, and amend its medication regulations, if necessary. In addition, this sets boundaries so that those

affected will know when the temporary suspension will end.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rule 1844.1 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed addition of Rule 1844.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposed addition of Rule 1844.1 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the

regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: haroldc@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033
E-mail: andreaog@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 10. DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION

DATE: March 11, 2011 REGULATION FILE: REG-2011-00002

SUITABILITY IN ANNUITY TRANSACTIONS

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 7.5 of the California Code of Regulations the new Article 1.4: Suitability in Annuity Transactions, consisting of Section 2695.185 et seq. The regulations set forth standards to protect consumers from being sold unsuitable annuities. The regulations also set forth standards and responsibilities that both insurers and insurance agents must follow and fulfill in their sales of annuities.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: April 25, 2011 at 10:00 a.m.

**Location: Department of Insurance
Administrative Hearing Bureau
Hearing Room
45 Fremont Street, 22nd Floor
San Francisco CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

**PRESENTATION OF WRITTEN COMMENTS;
CONTACT PERSONS**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on April 25, 2011. Please direct all written comments to the following contact person:

Jodi S. Lerner, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4122
Jodi.Lerner@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Leslie Tick
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4190
Leslie.Tick@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, no later than 5:00 p.m. on April 25, 2011. Any written materials received after that time may not be considered.

**COMMENTS TRANSMITTED BY E-MAIL
OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: Jodi.Lerner@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Jodi Lerner and sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 781, 783, 783.5, 785, 789.3, 790.03, 790.035, 1668, 1668.5, 1736, 1738, 1739, 1749.8, 10508, 10509.8, and 10509.9. Insurance Code sections 781, 783, 783.5, 789.6, 790.10, 1668, 1668.5, 1736, 1738, 1739, 1749.7, 10508, 10509.8, 10509.9, 12921, and 12926, provide authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi*, 8 Cal.4th 216 (1994).

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Under existing California law annuities are a form of life insurance. Life insurance products may be sold only by licensed life agents, appointed by and acting on behalf of an insurer, and insurers are responsible for the actions of their agents.

According to existing California law, each party to an insurance contract (the potential insured and the agent/insurer) when negotiating the contract has an affirmative duty in good faith to communicate to the other party all facts known to him that are, or that he believes to be, material. A fact or a representation is material if it would probably or could reasonably influence the party to whom it may be communicated in forming an estimate of the disadvantages of entering into the contract or in asking the other party questions. Unless asked, neither party has a duty to communicate: (1) any information which the other party should know, unless the communicating party has reason to suppose the other party is ignorant of that information, or (2) any information about, or that tends to prove the existence of, the existence of a risk that is not covered by the insurance, unless that information is material for some other reason.

All insurers, agents and others engaged in the transaction of insurance owe prospective insureds aged 65 and older a duty of good faith and fair dealing, which means that insurers and agents must give to the interest of the elderly prospective consumer of an annuity the same consideration that the insurers and agents give to their own interests. Additionally, misrepresenting the benefits or advantages of an insurance policy, and making a statement that is misleading or which ought to be known to be misleading, with regard to the business of insurance are prohibited acts. Furthermore, in order to be issued and maintain a license to be an insurance producer

in California, an individual or organization must not lack integrity or be untrustworthy.

Currently under existing California law, it is illegal for an insurer or producer to market any life insurance product in a misleading or deceptive manner. Regardless of whether the insurer or agent knows of the falsehood, (1) a materially inaccurate presentation or comparison of an existing contract when made by an insurer or agent in recommending that the contract be replaced or cashed out is illegal, and (2) a representation by an insurer or agent that is false in any material point entitles the insured to rescind the contract.

Most annuities are complex long-term investments in which the invested dollars may be unavailable for many years, and the withdrawal of funds from annuities often involves the payment of large surrender penalties and the forfeiture of income and other benefits of the investment. Annuities are extremely complex and insurers and their agents have been known to aggressively market and sell such insurance products to people for whom such an investment is not suitable, so that the investment causes more harm than benefit. For example, people who live on fixed incomes, have only limited assets, or those who have a limited ability to recover from economic loss, may purchase annuities without understanding the complex provisions that may make invested funds unavailable or prohibitively expensive to recover should the purchaser be required to withdraw funds from the annuity.

EFFECT OF PROPOSED ACTION

These proposed regulations are based on the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulations of March 2010 (the "NAIC Model") but contain certain California-only modifications. The regulations require insurers to establish a system to supervise the recommendations made by the insurer or by the insurer's agent to a consumer that result in the purchase of an annuity. The regulations exempt certain transactions — direct response solicitations where there is no recommendation made based on information collected from the consumer, for instance, as well as annuities used to fund certain other investments, such as ERISA plans. The regulations set forth duties of insurers and insurance producers that in recommending to a consumer the purchase of an annuity, or the exchange of an annuity, the producer or insurer must have reasonable grounds for believing that the recommendation is suitable for the consumer based on information disclosed by the consumer about her finances and investments. The regulations make it clear that "an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity is suitable based on the con-

sumer's suitability information." The regulations thus place on the insurer ultimate responsibility for the sale of an unsuitable annuity. The regulations require insurers to establish a supervision system designed to achieve the insurers' and the producers' compliance with suitability standards. The regulations allow insurers to contract out the supervision function. The regulations require that all insurance producers be adequately trained pursuant to state law prior to soliciting the sale of an annuity. The regulations give the Commissioner the authority, among other things, to order an insurer to take corrective action when he determines that a violation of the regulations has occurred. The regulations also specify record-keeping requirements for producers transacting annuities.

The proposed regulations also address Congressional concerns regarding state and federal regulation of fixed annuity products. In July 2010 President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173 ("Dodd-Frank")). Pursuant to Section 989J of Dodd-Frank, fixed rate annuities can continue to be regulated exclusively by a state if the state adopts annuity suitability standards that meet or exceed those contained in the 2010 NAIC Model.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations may have

a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers and life agents. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The agency is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state.

The proposed regulations could cause the annuity business of some insurers and some agents to decrease, as under the regulations all insurers will be permitted to sell only those annuities that are suitable for the purchaser. For most insurers and agents these new regulations will have no impact on their sales and profits. For others, the new regulations could reduce the amount of annuities that they sell.

In the Commissioner's assessment, this regulatory action will not result in any significant elimination of businesses and jobs in California. Additionally, the proposed regulations will not affect the expansion of other businesses doing business in California.

The new regulations will, however, impede the expansion of businesses that seek to victimize consumers, by convincing them to trade other investment vehicles for annuities that will not begin to pay until after the consumer's death, for instance. Currently, a percentage of annuity sales are unsuitable and once these regula-

tions are in effect that percentage should decrease, causing a small impact to reputable insurers and agents and a potentially larger impact on any disreputable players in the marketplace.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will affect small businesses to the extent that it affects insurance agents. However, insurance companies, which will also be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610.

COMPARABLE FEDERAL LAW

The proposed regulations comply with the requirements of Dodd-Frank.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final

statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Suitability in Annuity Transactions' link, and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2011-00002" (the Department's regulation file number for these regulations) in the search field. Alternatively, search by keyword ("annuity" for example, or "suitability"). Then, click on the 'Submit' button to display links to the various filing documents.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available

but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on April 25, 2011.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 15 days prior to the close of the written comment period.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference. Pursuant to the authority vested by Section 4005 of the Business and Professions Code, and to implement, interpret or make specific Sections 4005, 4127 and 4300 of said code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulation at Section 1715 of Article 2 of Division 17 of Title 16 of the California Code of Regulations requires a pharmacist-in-charge (PIC) of a pharmacy licensed under sections 4029 or 4037 of the Business and Professions Code to complete a self-assessment before July 1 of every odd-numbered year; and within 30 days whenever (1) a new pharmacy permit has been issued, or (2) there is a change in the PIC, and he or she becomes the new PIC of a pharmacy. The regulation incorporates by reference Form 17M-13 "Community Pharmacy & Hospital Outpatient Phar-

macy Self-Assessment" (Rev. 10/08) and Form 17M-14 "Hospital Pharmacy Self-Assessment" (Rev. 10/08). A self-assessment assists the pharmacy to increase compliance with federal and state requirements, and also makes the pharmacy inspection process more meaningful and provides relevant information to PICs.

The Board of Pharmacy proposes to amend Section 1715 of Article 2 of Division 17 of Title 16 of the California Code of Regulations for the purposes of requiring a pharmacist-in-charge of a pharmacy licensed pursuant to sections 4029 or 4037 of the Business and Professions Code to complete a self-assessment within 30 days whenever there is a change in the licensed location of the pharmacy. This proposed requirement is consistent with the requirements of wholesalers licensed by the board and would assist the pharmacist-in-charge to ensure that pharmacy operations at the new location are compliant with statutory and regulatory requirements. The proposal also would modify the name of Form 17M-13 to "Community Pharmacy Self-Assessment" "Hospital Outpatient Pharmacy Self-Assessment" — this change would clearly state that the self-assessment applies to both a "Community Pharmacy" and also to a "Hospital Outpatient Pharmacy." This proposal would provide for a revision date of "Rev. 01/11" for both Form 17M-13 and Form 17M-14. These changes would indicate to the pharmacist-in-charge that the information and references contained in the forms were current as of January 2011. The board also proposes changes to each self-assessment form that is incorporated by reference to (1) update citations/references since the last revisions (10/08); (2) correct previously misstated references and typographical errors; (3) make formatting changes; and (4) incorporate references to new regulatory or statutory requirements. These changes would assure the pharmacist-in-charge that the information and references contained in the forms were current as of the new revision date. Also, because Section 1735.2 of Article 4.5 of Division 17 of Title 16 of the California Code of Regulations requires any pharmacy that compounds drug products to complete a self-assessment incorporated by reference in that section (17M-39), items related to compounding have been removed from 17M-13 and 17M-14 for the purpose of eliminating duplication. Finally, the signature block for each self-assessment form was modified to add for an acknowledgement for the holder of the license issued by the board. This will ensure that the holder of the license has read and reviewed the completed self-assessment form, and would acknowledge that failure to correct any deficiency identified in the self-assessment(s) could result in the revocation of the license issued by the board.

Existing regulation at Section 1735.2 of Article 4.5 of Division 17 Title 16 of the California Code of Regula-

tions specifies limitations and requirements for compounding drug products. Compounding regulations became effective July 6, 2010. Subdivision (j) of § 1735.2 requires a pharmacist-in-charge to complete a self-assessment (1) before July 1 of each odd-numbered year; (2) within 30 days of the start of a new pharmacist-in-charge; and (3) within 30 days of the issuance of a new pharmacy license. The regulation incorporates by reference “Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-Assessment” (Form 17M-39 Rev. 01/10). Any pharmacy that compounds drug products is required to complete this self-assessment, which includes a section applicable to general compounding, and a section applicable to sterile injectable compounding.

The Board of Pharmacy proposes to amend Section 1735.2 of Article 4.5 of Division 17 of Title 16 of the California Code of Regulations to modify the title of the regulation section to also reference the self-assessment requirement. This change would indicate to the reader that a self-assessment is required by the section. The board also proposes a new revision date of the self-assessment form incorporated by reference (Form 17M-39) to be “Rev. 01/11” — this new revision date would indicate to the reader that the information and references contained in the form were current as of the revision date. Finally the proposal would make changes to the self-assessment form that is incorporated by reference. Those changes would (1) modify the name of the self-assessment form to be “Compounding Self-Assessment” (2) update citations/references since the last revision (01/10); (3) correct previously misstated references and typographical errors; (4) make formatting changes; and (5) incorporate references to new regulatory requirements. These changes would assure the pharmacist-in-charge that the information and references contained therein reflected current statutory and regulatory requirements. Finally, the proposed regulation would modify the signature block on the self-assessment form to add an acknowledgement for the holder of the license. This would ensure that the holder of the license has read and reviewed the completed self-assessment, and would acknowledge that failure to correct any deficiency identified in the self-assessment could result in the revocation of the license issued by the board.

Existing regulations at Section 1751 et seq. of Article 7 of Division 17 Title 16 of the California Code of Regulations specify limitations and requirements for compounding sterile injectable drug products. For a pharmacy that compounds drug products, these limitations and requirements are in addition to the requirements

found in Article 4.5 of Division 17 Title 16 of the California Code of Regulations (Sections 1735 et seq.).

The Board of Pharmacy proposes to amend Section 1751 of Article 7 of Division 17 of Title 16 of the California Code of Regulations for the purpose of rephrasing the text of subdivision (b) to make the phrase “compounding sterile injectable drug products” consistent throughout the Article, and to update Authority and Reference citations.

Existing regulation at Section 1784 of Article 10 of Division 17 of Title 16 of the California Code of Regulations requires the Designated Representative-in-Charge (DRIC) of a wholesaler to complete a self-assessment before July 1 of every odd-numbered year, or within 30 days of (1) a new wholesaler permit being issued; (2) when there is a change in the DRIC; and (3) when there is a change in the licensed location of a wholesaler to a new address. The regulation incorporates by reference “Wholesaler Dangerous Drugs & Dangerous Devices Self-Assessment” (Form 17M-26, Rev. 10/08). This self-assessment form assists wholesalers in increasing their compliance with legal requirements. The self-assessment form also makes the pharmacy inspection process more meaningful and provides relevant information to wholesalers and the DRIC.

The Board of Pharmacy proposes to amend Section 1784 of Article 10 of Division 17 of Title 16 of the California Code of Regulations to reflect a new revision date of the self-assessment form incorporated by reference to be “Rev. 01/11.” This change would indicate to the reader that the information and references contained in the form were current as of the revision date. The proposal also corrects a punctuation mark by adding a closing quotation mark after the name of the self-assessment form. The board also proposes changes to the self-assessment form (17M-26) to (1) update citations/references since the last revision (10/08); (2) correct previously misstated references and typographical errors; and (3) make formatting changes. These changes would assure the designated representative-in-charge that the information and references contained therein reflected current statutory and regulatory requirements. Finally, the board proposes to modify the signature block on the form to add an acknowledgement for the holder of the license issued by the board that they have read and reviewed the completed self-assessment form. This would ensure that the holder of the license has read and reviewed the completed self-assessment, and would acknowledge that failure to correct any deficiency identified in the self-assessment could result in the revocation of the license issued by the board.

FISCAL IMPACT

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The board has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. A pharmacy licensed under Sections 4029 and 4037 of the Business and Professions Code, and a wholesaler licensed under Section 4201 of the Business and Professions Code is currently required to complete a self-assessment before July 1 of every odd-numbered year. Additionally, any pharmacy licensed by the board that compounds drug products must comply with Articles 4.5 and 7. of Division 17 of Title 16 of the California Code of Regulations and must complete a self-assessment before July 1 of every odd numbered year. This proposal does not eliminate existing requirements, but it would require a pharmacy to also conduct a self-assessment when there is a change in the licensed location of the pharmacy to a new address. This is necessary to ensure that the pharmacy is compliant with statutory and regulatory requirements at the new location, and would protect the health and safety of the public.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that this proposal would not have a significant impact on small businesses. In addition to existing requirements, the proposal would require a pharmacy licensed by the board to conduct a self-assessment when there is a change in the licensed

location of the pharmacy to a new address. This is necessary to ensure that the pharmacy is in compliance with applicable statutory and regulatory requirements at the new location. This is reflective of the Board's public protection mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present written statements relevant to the above determinations to the Board of Pharmacy at the above-mentioned address.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board of Pharmacy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd., N219, Sacramento, California 95834, or from the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Carolyn Klein
Address: California State Board of
Pharmacy
1625 N. Market Blvd., N219
Sacramento, CA 95834
Telephone No.: (916) 574-7913
Fax No.: (916) 574-8618
E-Mail Address: Carolyn.Klein@dca.ca.gov

The backup contact person is:

Name: Anne Sodergren
Address: California State Board of
Pharmacy
1625 N. Market Blvd., N219
Sacramento, CA 95834
Telephone No.: (916) 574-7910
Fax No.: (916) 574-8618
E-Mail Address: Anne.Sodergren@dca.ca.gov

Web site Access. Materials regarding this proposal can be found at www.pharmacy.ca.gov.

TITLE 16. BOARD OF REGISTERED NURSING

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing (“board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held on:

June 15, 2011 — 1:00 p.m.
Double Tree Hotel
222 North Vineyard Avenue
Ontario, California

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office no later than 5:00 p.m. on **June 10, 2011**, or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2715, Business and Professions Code; and to implement, interpret or make specific Sec-

tions 315, 315.2, 315.4, 2750, 2759, 2761, and 2762, Business and Professions Code; Sections 11400.20, 11425.50(e) and 11500, Government Code; the board is considering changes to Division 14 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1444.5.

Business and Professions Code Section 2715 authorizes the Board of Registered Nursing (“BRN”) to adopt, amend, or repeal regulations as may be necessary to enable it to carry into effect the provisions of laws and regulations relating to the practice of nursing. Government Code Section 11400.20 authorizes an agency, such as the BRN, that uses the Administrative Procedure Act relating to administrative adjudications (“APA” — Chapter 4 [commencing with section 11370], Part 1 of Title 2 of the Government Code) to adopt regulations to govern an APA adjudicative proceeding. Under existing law (Government Code Section 11425.50), a penalty proposed by an Administrative Law Judge may not be based on a guideline, manual, order, or standard of general application unless it has been adopted as a regulation. The Nursing Practice Act (“NPA” — Business and Professions Code sections 2700 et seq.) provides that proceedings to discipline a registered nurse or to deny an applicant for a registered nursing license are to be conducted in accordance with the APA. The NPA specifies grounds for discipline and sanctions that may be imposed against registered nurses that have been determined to have violated the NPA. Article 3.6 (commencing with section 315) of Chapter 4 of Division 1 of the Business and Professions Code provides for the establishment of the Substance Abuse Coordination Committee in the Department of Consumer Affairs (“DCA”) which is to develop uniform and specific standards that a DCA healing arts board shall use in dealing with substance-abusing licensees. Existing law also provides for the use of a cease practice order if a licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation, if a licensee on probation commits a major violation of his or her probation or when a board orders a licensee to undergo a clinical diagnostic evaluation.

Existing regulations provide that in reaching a decision on a disciplinary action under the APA, the BRN shall consider disciplinary guidelines entitled “Recommended Guidelines for Disciplinary Orders and Conditions of Probation” (10/02). This regulatory proposal would amend regulation section 1444.5 to reference a revised version of the BRN’s disciplinary guidelines entitled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” (2/11), which is

hereby incorporated by reference, and require an Administrative Law Judge to apply the Uniform Standards Related to Substance Abuse where an applicant or licensee has a substance abuse disorder. The disciplinary guidelines would be revised to update the standard and optional terms of probation and include the provisions of the Uniform Standards Regarding Substance–Abusing Healing Arts Licensees adopted by the Department’s Substance Abuse Coordination Committee.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only affects individual licensees.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affects individual licensees.

Cost Impact on Representative Private Person or Business:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulations would not affect small businesses because the regulations are applicable only to applicants or licensees who are disciplined by the board.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above–mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. It may be obtained at the hearing or prior to the hearing upon request from the Board of Registered Nursing at 1625 N. Market Blvd., Suite N–271, Sacramento, California 95834 or on the board’s website at: www.rn.ca.gov.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Registered Nursing at 1625 N. Market Blvd., Suite N–217, Sacramento, California 95834 or on the board’s website: www.rn.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Alcidia Valim
 Address: 1625 N. Market Blvd.,
 Suite N-217
 Sacramento, CA 95834
 Telephone No.: (916) 574-7684
 Fax No.: (916) 574-7700
 E-Mail Address: Alcidia.Valim@dca.ca.gov

The backup contact person is:

Name: Christina Sprigg
 Address: 1625 N. Market Blvd.,
 Suite N-217
 Sacramento, CA 95834
 Telephone No.: (916) 574-7614
 Fax No.: (916) 574-7700
 E-Mail Address: Christina.Sprigg@dca.ca.gov

Website Address: Materials regarding this proposal can be found at: www.rn.ca.gov

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Sheraton Gateway Hotel LAX, 6101 W. Century Boulevard, Los Angeles, California, at 9:05 a.m. on May 6, 2011. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 25, 2011, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific Sections 1327 of said Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend subdivision (a) of Section 1327 of Article 7 of Chapter 1 of Division 13, relating to the Criteria for Approval of Clinical Training Programs for Foreign Medical Students.

1. Existing regulation specifies "Pursuant to Section 2064 of the code a medical student enrolled in a foreign medical school may practice medicine in a clinical training program approved by the division."

This first proposed amendment would clarify that foreign medical students must be enrolled in a foreign medical school recognized by the Board.

2. Existing regulation specifies that "The health facility shall be accredited for continuing education programs by the California Medical Association."

The second proposed amendment would allow the Board to consider health facilities accredited for continuing education programs by the California Medical Association or by the Accreditation Council for Continuing Medical Education.

NOTE: The Board also is making non-substantive technical changes to reflect the statutorily changed structure of the Board and the elimination of the Division of Licensing, changing "Division" to "Board." (AB 253 (Eng, Chapter 678, Statutes of 2007) combined the two divisions of the Board into one board.)

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact: None.

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

There are no costs associated with the proposed regulatory action. The proposed amendment would add an additional accrediting agency for approving clinical training programs.

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: None.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board had determined that the proposed regulations would not affect small businesses. This proposed regulation will only have an impact on clinical training programs requesting approval from the Medical Board.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained from the person designated in the Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which

is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Rhonda Baldo
Medical Board of California
Address: 2005 Evergreen St. Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2605
Fax No.: (916) 263-2487
E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Kevin A. Schunke
Medical Board of California
Address: 2005 Evergreen St. Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.medbd.ca.gov/laws/regulations_proposed.html.

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Sheraton Gateway Hotel LAX, 6101 W. Century Boulevard, Los Angeles, CA 90045 at 9:10 a.m. on May 6, 2011. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 25, 2011 or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days

prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific Sections 144 and 901 of said Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Sections 1333, 1333.1, 1333.2, and 1333.3, in Article 9.1 of Chapter 1 of Division 13, relating to Sponsored Free Health Care Events.

Sponsored Free Health Care Events is not addressed in current regulation.

This proposal requires the Medical Board of California to implement legislation, AB 2699, enacting Business and Professions Code Section 901, which took effect January 1, 2011. This statute provides a regulatory framework for certain health care events at which free care is offered to uninsured or under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California.

These proposed regulations will implement, interpret, and make specific the provisions of Section 901, including the application and registration requirements, disciplinary actions, etc.

The registration of sponsoring entity Form 901-A (MBC/2011) and the request for authorization to practice without a license Form 901-B (MBC/2011) are incorporated by reference.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None.

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of

California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a significant adverse economic impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

The regulation impacts those out-of-state health care practitioners applying to the Medical Board of California to participate in community-based organizations that provide sponsored free health care events in California.

The proposed regulation may provide an opportunity for out-of-state licensed volunteers to participate in community sponsored free health care events.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses; instead, the impact of this rulemaking is to offer free health care to uninsured or under-insured Californians by volunteer health care practitioners coming from out-of-state.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice. Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained from the person designated in the Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Jennifer Simoes, Chief of
Legislation
Address: Medical Board of California
2005 Evergreen Street,
Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Kevin A. Schunke
Medical Board of California
Address: 2005 Evergreen Street,
Suite 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.medbd.ca.gov/laws/regulations_proposed.html.

TITLE 17. CALIFORNIA INSTITUTE
FOR REGENERATIVE MEDICINE

NOTICE OF PROPOSED REGULATION AMENDMENTS

California Code of Regulations
Title 17. — Public Health
Division 4 — California Institute for
Regenerative Medicine
Chapter 6

Date: March 11, 2011

Deadline for Submission of Written Comment:
April 25, 2011 — 5:00 p.m.

Hearing Date: None scheduled.

Subject Matter of Proposed Regulations: SB 1064
Amendments to Intellectual Property Regulations

Sections Affected:

The proposed action amends sections 100607 and 100608 of Title 17 of the California Code of Regulations.

Authority: Article XXXV of the California Constitution and sections 125290.35, subdivisions (a), (b)(1), (2), (3), (4), (5) and (6); and 125290.40, subdivision (j), Health and Safety Code.

Reference: Sections 125290.30 and 125290.80, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The California Institute for Regenerative Medicine ("Institute" or "CIRM") was established in early 2005 with the passage of Proposition 71, the California Stem Cell Research and Cures Initiative. The statewide ballot measure, which provides \$3 billion in funding for stem cell research and dedicated facilities at California universities and research institutions, was approved by California voters on November 2, 2004, called for the establishment of a new state agency to make grants and provide loans for stem cell research, research facilities and other vital research opportunities.

The Independent Citizens Oversight Committee ("ICOC") is the 29-member governing board for the Institute. ICOC members are public officials, appointed on the basis of their experience earned in California's leading public universities, non-profit academic and research institutions, patient advocacy groups and the biotechnology industry.

The mission of the CIRM is to foster and promote stem cell research with the aim of improving human health. A secondary goal is to strengthen California's

biotechnology industry and create collateral economic benefits such as high-paying jobs and increased tax revenues. CIRM believes that the funding of commercial research organizations focused on stem cell-related projects is a key component to achieving the overall mission of the Institute. Increased interest by the commercial research sector in stem cell-related research projects and the successful translation of basic research discoveries into commercial products for public use are primary success indicators (among others) that can be used by CIRM to track benefits of commercial sector funding.

Public-private partnerships involving research and development activities among industry, government, and universities can play an instrumental role in introducing key new technologies and valuable products to the commercial marketplace. Experience shows that partnerships involving government participation in research and development activities with industry, universities, and government laboratories can greatly facilitate the translation of basic research discoveries to products with societal benefits.

On September 30, 2010 then-Governor Schwarzenegger signed into law Senate Bill No. 1064, which was sponsored by Senator Alquist. The law became effective January 1, 2011 and makes a number of amendments related to the California Stem Cell Research and Cures Act, commonly known as Proposition 71. The bill addressed numerous aspects of CIRM's operations. In addition, it codified, with four modifications, CIRM's revenue sharing and access plan regulations.

The four modifications were:

- (1) changing the time period for submission of access plans to the ICOC;
- (2) authorizing the ICOC to waive access plan requirements if certain conditions are met;
- (3) changing the terminology relating to eligible recipients of access plans from "uninsured Californians" as provided for in CIRM IP regulations to "Californians who have no other means to purchase the drug"; and
- (4) changing the revenue sharing regulation which levies a 1% royalty on net sales in excess of \$500 million annually so that it applies only in instances where more than \$5 million of CIRM funding generated patented inventions or technologies that "contributed to the creation of the product" generating such revenue. Currently under CIRM's regulations the 1% royalty would apply regardless of whether the CIRM Funded Invention or CIRM Funded Technology "involved in the achievement of" the \$500 million in revenue was patented or not.

The proposed regulatory action amends sections 100607 and 100608 to harmonize them with the changes made by SB 1064.

Technical, Theoretical or Empirical Studies, Reports or Documents:

A. Documents or Laws:

None.

B. Public Input:

None.

Copies of the documents referenced above are available at the internet link indicated or at the offices of CIRM located at 210 King Street, San Francisco, California, 94107. Transcripts and meeting minutes of the meetings referenced in Section "B" are available on CIRM's website, www.cirm.ca.gov under the "Meetings Transcripts" and "Meetings Minutes" links.

Submittal of Comments:

Any interested party may present comments in writing about the proposed action to the agency contact person named in this notice. Written comments must be received no later than 5:00 p.m. on April 25, 2011. Comments regarding this proposed action may also be transmitted via e-mail to mescomments@cirm.ca.gov or by facsimile transmission to (415) 396-9141.

At this time, no public hearing has been scheduled concerning the proposed regulations. If any interested person or the person's representative requests a public hearing, he or she must do so in writing no later than April 10, 2011.

Effect on Small Business:

CIRM has determined that the proposed regulatory action has no impact on small businesses. The proposed amendments implement conditions on awarding grants for stem cell research. This research is conducted almost exclusively by large public and private non-profit institutions, as well as large for-profit institutions. As such, the regulation is not expected to adversely impact small business as defined in Government Code section 11342.610.

Impact on Local Agencies or School Districts:

CIRM has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. CIRM has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

Costs or Savings to State Agencies:

CIRM has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

Effect on Federal Funding to the State:

CIRM has determined that no costs or savings in federal funding to the state will result from the proposed regulatory action.

Effect on Housing Costs:

CIRM has made an initial determination that the proposed action will have no effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

CIRM has made an initial determination that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses:

CIRM has made an initial determination that the regulatory action will not have a significant cost impact on representative private persons or businesses. The CIRM is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on the Creation, Elimination, or Expansion of Jobs:

CIRM has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Consideration of Alternatives:

CIRM must determine that no reasonable alternatives considered by the agency, or that have otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the regulatory action.

Availability of Statement of Reasons and Text of Proposed Regulations:

CIRM has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which CIRM relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

Availability of Changed or Modified Text:

After the close of the comment period, CIRM may make the proposed regulation permanent if it remains

substantially the same as described in the Policy Statement Overview. If CIRM does make changes to the proposed amendments to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM will accept written comments on any changes for 15 days after the modified text is made available.

Agency Contact:

Written comments about the proposed regulatory action; requests for a copy of the Initial Statements of Reasons, the proposed text of the regulation, and a public hearing, and questions about the proposed action; and inquiries regarding the rulemaking file may be directed to:

C. Scott Tocher, Counsel
California Institute for Regenerative Medicine
210 King Street
San Francisco, CA 94107
(415) 396-9100

or

Amy Cheung
California Institute for Regenerative Medicine
(415) 396-9255

The Notice of Proposed Regulatory Adoption, the Initial Statement of Reasons and any attachments, and the proposed text of the regulations are also available on CIRM's website, www.cirm.ca.gov.

Availability of Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9, subdivision (a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on CIRM's webpage and accessed at www.cirm.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO.
2080-2011-003-03**

Project: Burbank Avenue Elementary School

Location: Sonoma County

Applicant: Roseland School District

Notifier: George Molnar

Background

Roseland School District (Applicant) proposes to construct a new elementary school with associated faci-

ilities on an 11.4-acre site located in Santa Rosa, California. The Burbank Avenue Elementary School (Project) includes using 8.7 acres to construct classrooms, multi-use and administration buildings, outdoor play areas, play fields, basketball courts, two vehicular parking areas, and an area to be used for future District offices and associated parking. The Project also includes a box culvert extension for the existing Burbank Avenue crossing of Roseland Creek, storm water management facilities for the treatment and detention of runoff, and the installation of a 6-foot wide by 56-foot long pedestrian bridge across Roseland Creek, consisting of a prefabricated steel frame structure with a wooden deck.

The Project activities described above are expected to incidentally take California tiger salamander (*Ambystoma californiense*) where those activities take place within the 8.7 acres to be used at 1683 Burbank Avenue. In particular, California tiger salamander could be incidentally taken as a result of being crushed and/or entombed in burrows. The Sonoma County Distinct Population Segment of the California tiger salamander is listed as an endangered species under the Federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and as a threatened species throughout its range under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G).)

California tiger salamanders are documented as present 1.3 miles from the Project site and there is suitable California tiger salamander habitat within and adjacent to the Project site. Because of the proximity of the nearest documented California tiger salamander, dispersal patterns of California tiger salamander, and the presence of suitable California tiger salamander habitat within the Project area, the U.S. Fish and Wildlife Service (Service) determined that California tiger salamander is reasonably certain to occur within the Project site and that Project Activities are expected to result in the incidental take of California tiger salamander.

According to the Service, the Project will result in the permanent loss of 8.4 acres of upland California tiger salamander habitat.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the U.S. Army Corps of Engineers (Corps) consulted with the Service as required by the ESA. On June 19, 2010, the Service issued a letter (Service file No. 81420-2009-F-0573-1) (Append Letter) to the Corps appending the Project to the *Programmatic Biological Opinion for U.S. Army Corps of Engineers Permitted Projects that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain* (Service File 81420-2008-F-0261) (PBO). The

Append Letter describes the Project, requires the Applicant to comply with terms of the PBO and its incidental Take Statement (ITS), and incorporates additional measures. The Corps requested a reinitiation of consultation on the Project and an amendment letter (Service file No. 81420-2009-F-0573-2) was issued by the Service on January 21, 2011 that changes the compensation language of the BO.

On January 25, 2011, the Director of the Department of Fish and Game (DFG) received a notice from George Molnar, on behalf of the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the Append Letter, PBO and its related ITS, and the amendment letter are consistent with CESA for purposes of the Project and California tiger salamander. (Cal. Reg. Notice Register 2011, No. 6-Z, p.168.)

Determination

DFG has determined that the Append Letter, PBO, including the ITS, and amendment letter are consistent with CESA as to the Project and California tiger salamander because the mitigation measures contained in the Append Letter, PBO, ITS, and amendment letter meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that: (1) take of California tiger salamander will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the Append Letter, PBO, ITS, and amendment letter will minimize and fully mitigate the impacts of the authorized take; and (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of California tiger salamander. The mitigation measures in the Append Letter, PBO, ITS, and amendment letter include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Applicant will mitigate for the loss of California tiger salamander habitat with the purchase of 8.4 acres of habitat at the Alton North Conservation Bank prior to ground-disturbing activities.
- Applicant will enclose all food and food-related trash in sealed trash containers and will remove the containers completely from the site once every three days.
- Applicant will maintain all equipment so there will be no leaks of automotive fluids such as gasoline, oils, or solvents.
- Applicant will store hazardous materials in sealable containers in a designated location at least 200 feet from aquatic habitats.

- Applicant will conduct clearing and grading between April 15 and October 15 of any given year.
- A trained biologist will give construction workers a training session before work is started. After the initial training session, all new personnel will also be given a training session. This training session will include pictures of California tiger salamander, information on the biology of California tiger salamander, the measures required to protect California tiger salamander, federal and state regulations, and what to do if California tiger salamander are found.
- If California tiger salamander are found on the Project site by a construction worker, the worker will immediately inform the biological monitor. All work will halt immediately and machinery will be turned off within 100 feet of the California tiger salamander. The biologist will capture and remove the California tiger salamander from the work area.
- Before the start of work each morning, the biological monitor will check for animals under any equipment such as vehicles and stored pipes.
- Prior to the start of construction, exclusion fencing will be installed around the project site. Throughout the period of construction, a biological monitor will inspect the fence each morning prior to the start of work to verify that the fence is intact.

Monitoring and Reporting Measures

- A record of all California tiger salamander observed and the outcome of that observation will be kept by the biologist and submitted to the Service.
- A trained biological monitor will be present at all times when work is in progress at the Project site.

Financial Assurances

- Applicant will provide financial assurances consistent with CESA, in the form of a completed purchase of 8.4 acres of California tiger salamander credits at the Alton North Conservation Bank prior to ground disturbing activities. A copy of the Bill of Sale and payment receipt for the credits will be provided to the Service and DFG.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of California tiger salamander, provided the Applicant implements the Project as described in the Append Letter and amendment letter, including adherence to all measures contained therein, and complies with the mitigation measures and other

conditions described in the Append Letter, PBO, ITS, and amendment letter. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the Append Letter, PBO, and ITS, or amendment letter, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from DFG (see generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)). This determination is limited to consistency of the Programmatic BO as applied specifically to the Project, and does not cover other activities that might be appended to the Programmatic BO in the future. Separate determination(s) or take authorization(s) must be obtained for future activities that may result in take of CESA-listed species.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication March 11, 2011
CESA CONSISTENCY DETERMINATION
REQUEST FOR
American Basin Fish Screen and Habitat
Improvement Project
Sacramento and Sutter Counties
2080–2011–006–02

The Department of Fish and Game (Department) received a notice on February 23, 2011 that the U.S. Bureau of Reclamation (BOR) and the Natomas Mutual Water Company (NMWC) propose to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action would consist of consolidating five existing diversions on the Sacramento River and Natomas Cross Canal into two new screened diversion facilities.

The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (File No. 81420–2008–F–1129–1)(BO) and incidental take statement (ITS) to the BOR on March 9, 2009 which considered the effects of the project on the Federally and State threatened giant garter snake (*Thamnophis gigas*) and the Federally threatened and State endangered delta smelt (*Hypomesus transpacificus*). The Service issued a reinitiation of the BO (File No. 81420–2008–F–1129–1) on February 3, 2011. Additionally, the National Marine Fisheries Service (NMFS) issued a federal biological opinion (File No. 2008/01096: MTM) and ITS to the BOR on December 29, 2008 which considered the effects of the project on the Feder-

ally and State endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and the Federally and State threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*).

Pursuant to California Fish and Game Code Section 2080.1, the BOR and NMWC are requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, the BOR and the NMWC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication March 11, 2011
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Oak County Trails II Project
(2080–2011–007–05)
San Diego County

The Department of Fish and Game (Department) received a notice on February 28, 2011 that the County of San Diego Department of Parks and Recreation proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves installation of picnic table shade covers, vehicle gates, a trail gate, and a wood kiosk, and surfacing of parking/driving areas.

The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (File No. FWS–SDG–08B0770–11F0268)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers, Los Angeles District on February 24, 2011 which considered the effects of the project on the Federally endangered and State threatened Stephens’ kangaroo rat (*Dipodomys stephensi*).

Pursuant to California Fish and Game Code Section 2080.1, the County of San Diego Department of Parks and Recreation is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, the County of San Diego Department of Parks and Recreation will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication March 11, 2011
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Terra Bagnata and Shamrock Materials, Inc. Todd
Road Operation Facility Project
(2080–2011–008–03)
Sonoma County

The Department of Fish and Game (Department) received a notice on February 28, 2011 that Shamrock Materials, Inc. and Terra Bagnata L.L.C. propose to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action includes creation of the Shamrock Todd Road Operation Facility and Terra Bagnata Mitigation Site.

The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (File No. 1–1–06–F–0252)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on March 24, 2008 which considered the effects of the project on the Federally endangered and State threatened Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) and the Federally and State endangered Burke’s goldfield (*Las-thenia burkei*), Sonoma sunshine (*Blennosperma bakeri*), and Sebastopol meadowfoam (*Limnathes vinculanus*).

Pursuant to California Fish and Game Code Section 2080.1, Shamrock Materials, Inc. and Terra Bagnata L.L.C. are requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, Shamrock Materials, Inc. and Terra Bagnata L.L.C. will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

FISH AND GAME COMMISSION

CALIFORNIA FISH AND GAME COMMISSION NOTICE OF RECEIPT OF AMENDED PETITION

NOTICE IS HEREBY GIVEN that, pursuant to Court remand in *Center for Biological Diversity v. California Fish and Game Commission* California Superior Court for the County of San Francisco, Case No.

CPF-09-509927, the California Fish and Game Commission, at its February 3, 2011, meeting in Sacramento, accepted for consideration the amended petition submitted to list the American pika (*Ochotona princeps*) as a threatened species.

The American pika inhabits talus fields fringed by suitable vegetation on rocky slopes of alpine areas throughout western North America.

Pursuant to Section 2073.7 of the Fish and Game Code, on February 10, 2011, the Commission transmitted the amended petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. Interested parties may contact Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, 1812 Ninth Street, Sacramento, CA 95811, or telephone (916) 445-3555 for information on the petition or to submit information to the Department relating to the petitioned species.

RULEMAKING PETITION DECISIONS

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections

PETITIONER

Restore California Visits

AUTHORITY

Under authority established in Penal Code (PC) Section 5058, the Secretary of the California Department of Corrections and Rehabilitation may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Secretary the supervision, management, and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner requests the Department of Corrections repeal the California Code of Regulations (CCR), Title 15, Division 3, Section 3177(b)(2), Family Visits.

DEPARTMENT DECISION

The California Department of Corrections and Rehabilitation (CDCR) denies the petitioner's request. In 2003, pursuant to the authority under Penal Code (PC) Section 5058.3, in accordance with the provisions of the Administrative Procedure Act (APA), the CDCR amended Title 15, Division 3, Article 7, Family Visiting as an emergency operation necessity. In these amended regulations, Section 3177(b)(2), Family Visiting (overnight), prohibits inmates who are sentenced to life without the possibility of parole, sentenced to life without a parole date established by the Board of Prison Terms; designated Close A or Close B custody; designated a condemned inmate; assigned to a reception center; assigned to an administrative segregation unit; assigned to a security housing unit; designated "C" status; guilty of one or more Division A or Division B offense(s) within the last 12 months; or guilty of narcotics distribution while incarcerated in a state prison.

The intent of the Department in adopting this rule was to allow inmates who have been sentenced under PC 1170 Determinate Sentencing priority for overnight visiting. Furthermore, facilities, space and staffing to support overnight visiting is limited and must be prioritized accordingly. This will allow the inmates who will return to the community the opportunity to strengthen family ties and to enhance their rehabilitation during incarceration by increasing the chances for successful parole. The Department recognizes this is not a factor for those who will never parole or do not have an established parole date. However, for those inmates who are not eligible for overnight visiting they have the opportunity to foster family relationships through the general visiting program.

The Department recognizes the value of visiting when it fosters a healthy means to establish and maintain meaningful family and community relationships. And the Department reviews ways to improve inmate visiting. However, giving priority for family (overnight) visits to inmates who will reenter society in the future is the Department's first and foremost responsibility.

MEDICAL BOARD OF CALIFORNIA

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to
Modify Title 16 CCR 1327

DECISION GRANTING PETITION

By letter dated December 7, 2010, the City of Hope petitioned the Medical Board of California (“Board”) to amend Title 16 CCR section 1327(a)(3) to include a reference to the Accreditation Council for Continuing Medical Education.

At its meeting on January 28, 2011, the Board voted to grant the petition. The matter will be set for hearing at the Board’s May 6, 2011 meeting. The Board is authorized by Business and Professions Code Section 2018 to take this action.

Interested persons may obtain a copy of the petition from the Medical Board of California by contacting Kevin Schunke at (916) 263–2368 or at Kevin.Schunke@mbc.ca.gov or by sending a written request to the following address: Medical Board of California, 2005 Evergreen Street, Suite 1200, Sacramento, California 95815.

Dated: 2/28/11

/s/
LINDA K. WHITNEY
Executive Director
Medical Board of California

**OAL REGULATORY
DETERMINATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5
and
Title 1, section 270, of the
California Code of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would

like to view the attachments please contact Margaret Molina at (916) 324–6044 or mmolina@oal.ca.gov.

Date: February 25, 2011

To: Eric Eleson

From: Chapter Two Compliance Unit

Subject: **2011 OAL DETERMINATION NO. 5 (S)
(CTU2011–0103–02)**

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a memorandum dated October 26, 2010, from Mule Creek State Prison dealing with the delivery of first class mail.

On January 3, 2011, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a memorandum dated October 26, 2010, from Mule Creek State Prison dealing with the delivery of first class mail constitutes an underground regulation. This memorandum was issued by the warden at Mule Creek State Prison and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), expressly esta-

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

blishes exemptions for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition was issued by Mule Creek State Prison and applies solely to the inmates of Mule Creek State Prison. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.³

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

[Emphasis added.]

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

DEBRA M. CORNEZ

Assistant Chief Counsel/Acting Director

/s/

Kathleen Eddy

Senior Counsel

Copy: Matthew Cate

Tim Lockwood

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2011-0204-08

BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

Board Name Change, Statute Compliance, and Grammatical Correction

The Board for Professional Engineers, Land Surveyors, and Geologists (Board) is amending sections 400, 401, 404, 463.5, 3000, 3003, 3021, and 3065, title 16, California Code of Regulations, in order to provide the name change for the Board from “Board for Professional Engineers and Land Surveyors” to “Board for Professional Engineers, Land Surveyors, and Geologists” (Ch. 696, Stats. 2010).

Title 16

California Code of Regulations

AMEND: 400, 401, 404, 463.5, 3000, 3003, 3021, 3065

Filed 02/23/2011

Effective 02/23/2011

Agency Contact: Larry Kereszt (916) 263-2240

File# 2011-0215-02

BOARD OF EDUCATION

California High School Exit Exam (CAHSEE) Alternative Means

The Board of Education submitted this timely Certificate of Compliance action to make permanent the emergency regulation adopted in OAL File No. 2010-1008-02E, filed 10/18/2010. Under Education Code section 60852.2(b), eligible students with disabilities (SWDs) were exempt until 1/1/2011 from taking the California High School Exit Examination (CAHSEE) in order to graduate, but were required to take an "alternative means" exit examination as of 1/1/2011 pursuant to regulations implemented by the Board. Education Code section 60852.2(b) authorizes the Board to extend by regulation the 1/1/2011 statutory deadline for up to two years in order to implement the CAHSEE alternative means regulations. The emergency action adopted title 5, California Code of Regulations, section 1216.1, which extended the 1/1/2011 statutory deadline to 7/1/2012 for the Board to implement the CAHSEE alternative means regulations.

Title 5

California Code of Regulations

ADOPT: 1216.1

Filed 03/01/2011

Agency Contact: Cynthia Olsen (916) 319-0584

File# 2011-0120-04

DEPARTMENT OF FOOD AND AGRICULTURE

Insects Exempt from Permit

This Section 100 action corrects unintentional errors in the listing of "Insects Which May Be Imported or Shipped Into or Within California Without a Permit". The Department mistakenly listed the "Twospotted spider mite" next to the wrong Latin name and listed a Latin name "Stegobium paniceum" without the corresponding correct common name of "Drugstore beetle".

Title 3

California Code of Regulations

AMEND: 3558

Filed 03/01/2011

Agency Contact: Lindsay Rains (916) 654-1017

File# 2011-0216-03

FAIR POLITICAL PRACTICES COMMISSION

Financial Disclosure by Employees of Newly Created Agencies

This emergency regulatory action deals with financial disclosure by employees of newly created agencies. Pursuant to California Code of Regulations, title 2, section 18312(e)(1)(B), this emergency regulatory action is effective February 10, 2011.

OAL's review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on

June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer (April 27, 1992, C010924 [nonpub. opn.])). As such, OAL's review is limited to determining if the proposed regulations comply with "the form and style prescribed by the Secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State." (Former Gov. Code, section 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

Title 2

California Code of Regulations

AMEND: 18734, 18751

Filed 02/23/2011

Effective 02/10/2011

Agency Contact:

Virginia Latteri-Lopez (916) 324-3854

File# 2011-0121-01

NEW MOTOR VEHICLE BOARD

Sanctions — Bad Faith Actions

This rulemaking action adds new section 551.21 to Title 13 of the California Code of Regulations. The new regulation gives administrative law judges the authority to recommend to the New Motor Vehicle Board (NMVB) an order of monetary sanctions (including attorney's fees and costs) against a party or their representative or both for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. The NMVB may adopt the recommendation, or not, at its next regular meeting.

Title 13

California Code of Regulations

ADOPT: 551.21

Filed 02/24/2011

Effective 03/26/2011

Agency Contact: Robin P. Parker (916) 323-1536

File# 2011-0118-02

NEW MOTOR VEHICLE BOARD

Case Management

This action updates the New Motor Vehicle Board's administrative hearing procedure and associated definitions of terms.

Title 13

California Code of Regulations

ADOPT: 551.19, 551.20, 551.23, 551.24, 551.25

AMEND: 550, 551.2, 551.11, 551.12

Filed 02/24/2011

Effective 03/26/2011

Agency Contact: Robin P. Parker (916) 323-1536

File# 2011-0113-01

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Conflict-of-Interest Code

This is a Conflict-of-Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 14

California Code of Regulations

AMEND: 11600

Filed 02/24/2011

Effective 03/26/2011

Agency Contact: John Bowers (415) 352-3610

File# 2011-0223-01

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

Dispensing Audiologists Fees/Continuing Professional Development

This regulatory action implements statutory changes to establish registration, renewal and professional development requirements for licensed audiologists authorized to dispense hearing aids. AB 1535, which became effective January 1, 2010, merged the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau to create one oversight body, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

Title 16

California Code of Regulations

AMEND: 1399.157, 1399.160.3, 1399.160.6

Filed 03/01/2011

Effective 03/01/2011

Agency Contact:

Annemarie Del Mugnaio (916) 263-2909

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN September 29, 2010 TO
March 2, 2011**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of

the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

02/23/11 AMEND: 18734, 18751

02/17/11 AMEND: 18116

02/17/11 AMEND: 18239

02/17/11 ADOPT: 18401.1, 18435.5

02/15/11 AMEND: 599.500, 599.501

01/28/11 ADOPT: 559

01/26/11 ADOPT: Headings for Subchapter 1.3, Article 1, Article 2, Article 3, Article 4
AMEND: Heading for Subchapter 1.3 — Article 25

01/25/11 AMEND: 1859.2, 1859.71.6, 1859.77.4, 1859.81.1, 1859.104

01/13/11 AMEND: 1859.2, 1859.302, 1866, Form SAB 50-02, 50-03, 50-04, 50-06, 50-07, 50-08, 50-09, 50-10, 61-04, 40-20, 40-21, 40-24

01/12/11 ADOPT: 172.9, 172.10 AMEND: 172.6, 172.7, 172.8, 172.10 (renumbered to 172.11), 172.11 (renumbered to 172.12)
REPEAL: 172.9

01/12/11 AMEND: 59.3 Appendix A

01/06/11 ADOPT: 649.17.1, 649.19, 649.20
AMEND: 647.4, 649.14, 649.15, 649.16, 649.17, 649.26, 649.28, 649.31, 649.32, 649.33, 649.48, 649.50, 649.51, 649.57, 649.62

01/06/11 AMEND: 67.3

12/28/10 AMEND: Div. 8, Ch. 114, Sec. 59590

12/21/10 AMEND: 561, 561.1, 561.2, 561.3, 561.4, 561.5, 561.8, 561.9, 561.11 (renumbered to 561.10), 561.12 (renumbered to 561.11), 561.13 (renumbered to 561.12) REPEAL: 561.10, 561.14

12/20/10 AMEND: 18723

12/20/10 ADOPT: 18215.2 AMEND: 18215, 18225, 18450.1, 18450.4, 18450.5

12/16/10 ADOPT: 1859.90.1 AMEND: renumber 1859.90.1 as 1859.90.2 (not shown), 1859.129, 1859.197

11/30/10 AMEND: 67.8 (Appendix A)

11/23/10 ADOPT: 1190, 1190.01, 1190.02, 1190.03, 1190.04, 1190.05

11/22/10 AMEND: 1859.2, 1859.83

11/16/10 AMEND: 7286.1

11/15/10 AMEND: 18545, 18703.4, 18730, 18940.2, 18943

11/15/10 AMEND: 18225

10/29/10 ADOPT: 1859.90.2 AMEND: Renumber 1859.90.2 to 1859.90.3, 1859.129, 1859.197

10/28/10 AMEND: 59.1
 10/27/10 ADOPT: 1185.21, 1189 AMEND: 1181,
 1181.1, 1181.2, 1181.4, 1183, 1183.01,
 1183.02, 1183.03, 1183.06, 1183.07,
 1183.08, 1183.081, 1183.09, 1183.11,
 1183.12, 1183.131, 1183.14, 1183.2,
 1183.21, 1183.30, 1183.31, 1183.32,
 1185, 1185.2, 1185.3, 1185.4, 1185.5,
 1185.6, 1186, 1187, 1187.2, 1187.3,
 1187.9, 1188, 1188.1, 1188.2, 1188.3,
 1188.31, 1189.1, 1189.3 REPEAL:
 1181.3, 1189.4, 1189.5
 10/26/10 ADOPT: 2297.1
 10/21/10 ADOPT: 58.8 AMEND: 59.3
 10/11/10 ADOPT: 599.937.4
 10/07/10 AMEND: 51.1
 10/07/10 AMEND: 51.2(u)
 10/07/10 AMEND: div. 8, ch. 46, sec. 53500
 10/05/10 AMEND: div. 8, ch. 79, sec. 56800
 10/05/10 ADOPT: 1859.172 AMEND:
 1859.162.3, 1859.171
 10/04/10 AMEND: 1859.2, 1859.81
 10/04/10 ADOPT: 642, 643, 644, 645 AMEND:
 640, 641

Title 3

03/01/11 AMEND: 3558
 02/17/11 AMEND: 3437
 02/15/11 AMEND: 3430
 02/15/11 ADOPT: 820.55 AMEND: 820, 820.3,
 820.6, 820.7
 02/10/11 AMEND: 3601
 02/10/11 AMEND: 3434(b), (c)
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 65740, 65745, 65750, 65755
 12/21/10 ADOPT: 64417, 64418, 64418.1,
 64418.2, 64418.3, 64418.4, 64418.5,
 64418.6, 64418.7
 12/15/10 AMEND: 100105
 11/10/10 AMEND: 51516.1
 10/26/10 AMEND: 97234, 97264, 97267
 10/06/10 AMEND: 100080
 10/06/10 AMEND: 100080

Title 22, MPP

10/11/10 AMEND: 88030

Title 23

01/19/11 ADOPT: 3775.5, 3776, 3779.5 AMEND:
 3720, 3721, 3722, 3723, 3730, 3733,
 3740, 3741, 3742, 3750, 3751, 3762,
 3763, 3775, 3777, 3778, 3779, 3780,
 3781 (Appendices A and C) REPEAL:
 3760, 3761, 3764, 3776, 3782
 01/18/11 ADOPT: 5000
 01/03/11 ADOPT: 3919.9
 12/23/10 ADOPT: 3939.37
 12/20/10 ADOPT: 907, 910, 915, 920, 921, 925,
 929, 930
 12/17/10 ADOPT: 596, 596.1, 596.2, 596.3, 596.4,
 596.5
 12/15/10 AMEND: 3943
 12/07/10 ADOPT: 3909 AMEND: 3900
 11/18/10 AMEND: 2200, 2200.3, 2200.4, 2200.6
 11/17/10 AMEND: 1062, 1064, 1066, 3833.1
 11/04/10 ADOPT: 3929.5

Title 25

02/18/11 ADOPT: 1013, 1052, 1119, 1757, 1759,
 2013, 2052, 2119, 2757, 2759 AMEND:
 1002, 1008, 1018, 1104, 1118, 1180,
 1211, 1333, 1334, 1334.2, 1336.1, 1346,
 1377, 1426, 1429, 1432, 1446, 1450,
 1458, 1464, 1468, 1474, 1498, 1500,
 1502, 1504, 1506, 1612, 1618, 1750,

	1752, 1754, 1756, 1758, 2002, 2008, 2018, 2104, 2118, 2211, 2230, 2334, 2346, 2426, 2429, 2432, 2468, 2474, 2498, 2500, 2502, 2504, 2506, 2612, 2750, 2752, 2754, 2756, 2758 REPEAL: 1613, 1615, 1616, 2613, 2615, 2616	Title 27 02/16/11 AMEND: 27001 01/26/11 AMEND: 25705 01/26/11 AMEND: 25705 12/16/10 AMEND: 25805 11/18/10 AMEND: 25805
02/10/11	ADOPT: 4313 AMEND: 4300, 4302, 4304, 4306, 4308, 4310, 4312, 4314, 4316, 4318, 4320, 4322, 4324	Title MPP 02/15/11 AMEND: 16-015, 16-120, 16-601 REPEAL: 16-315
01/28/11	AMEND: 3070, 4204, 4210, 4212	01/31/11 AMEND: 31-021
01/26/11	ADOPT: 7980, 7980.1, 7980.2, 7980.3	12/22/10 AMEND: 42-302, 42-712, 42-713